

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE:	)	CHAPTER 7
	)	
AULDWYN M. MCFARLAND,	)	CASE NO. 07-62427
	)	
Debtor.	)	JUDGE RUSS KENDIG
	)	
	)	
	)	<b>MEMORANDUM OF OPINION</b>
	)	<b>(NOT INTENDED FOR</b>
	)	<b>PUBLICATION)</b>

This matter is before the court on Debtor's Application to Proceed *In Forma Pauperis* (hereafter "application") filed on August 17, 2007. On August 24, 2007, the court entered an order requesting additional documentation from Debtor to assist the court in assessing Debtor's current financial condition. Debtor filed the requested documents on September 18, 2007.

Following passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, debtors are permitted to seek a waiver of the bankruptcy filing fee. Pursuant to 28 U.S.C. § 1930(f), a "bankruptcy court may waive the filing fee . . . if the court determines that such individual has less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments." By the terms of the statute, a court's ability to waive the fee is permissive, not mandatory ("may waive"), and is premised upon a finding that a debtor meets the income and inability to pay in installments criteria.

The court will first determine whether Debtors' income is 150 percent of the poverty level. According to the Department of Health and Human Services 2007 Poverty Level Guidelines, available at <http://aspe.hhs.gov/poverty/07poverty.shtml>, the poverty income for a family of two is \$13,690.00. At 150 percent of poverty, the poverty income for this family is \$20, 535.00 annually, or \$1,711.25 per month.

Form B22A (the "means test") indicates Debtors' Annualized Current Monthly Income is \$5,919.48 which is based on a monthly income of \$493.29 from Debtor's employment. Although Debtor submitted a statement that she has not worked in the two months preceding the filing of this case, Schedule I indicates that Debtors' monthly net income is \$409.86 per month. Her 2006 income tax return indicates debtor's 2006 adjusted gross income was \$6,339.00 and she received a \$2,672.00 income tax refund. Clearly, the figures indicate that Debtor earns less than 150% of the poverty threshold and therefore Debtor has satisfied the first prong of the test.

Next, the court must determine if Debtor has the ability to pay the filing fee in installments. Upon review of Debtor's Schedule J, the court concludes that Debtor is not able to pay the filing fee in installments. Debtor's modest budget, with expenses for two people totaling \$584.00 per month, results in a monthly shortfall of \$174.13. Thus, the court finds that Debtor does not have the ability to pay the filing fee in installments and has satisfied the second prong of the test.

Wherefore, in light of the above, the Court hereby **GRANTS** Debtor's application to waive the filing fee.

An order in accordance with this decision shall be issued immediately.

**/s/ Russ Kendig**

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RUSS KENDIG  
U.S. BANKRUPTCY JUDGE

**OCT 25 2007**

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